

**GENERAL GOVERNMENT  
Department of Agriculture  
Office of Agricultural Marketing  
(Amendment)**

**302 KAR 50:050. THC sampling and testing; post-testing actions.**

RELATES TO: KRS 260.850 - 260.869, 7 U.S.C. 5940

STATUTORY AUTHORITY: KRS 260.862, 250.355

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations for any industrial hemp research pilot program in the Commonwealth of Kentucky. KRS 260.862(1)(e) authorizes the department to prescribe sampling and testing procedures to ensure that industrial hemp and industrial hemp products cultivated, handled, processed, or marketed pursuant to KRS 260.862 do not exceed the concentration levels defined in 7 U.S.C. 5940. KRS 250.355 requires the director of the Agricultural Experiment Station or his or her designee to receive samples and test industrial hemp plants, plant parts, and materials grown or located within the Commonwealth in order to determine if the industrial hemp plants, plant parts, and materials are in compliance with the provisions of KRS 260.850 through 260.869 and 302 Chapter 50. This administrative regulation establishes the procedures and requirements for sampling, testing, and post-testing.

Section 1. Definitions. (1) "Department" is defined by KRS 260.850(3).

(2) "UK DRS" means the University of Kentucky Division of Regulatory Services.

Section 2. Department Procedures. (1) The department shall collect and handle hemp samples in accordance with the department SOP# KDA-HEMP-20171214-1 (Procedures for Sampling, THC Testing, and Post-Testing Actions), Sections II through VII.

(2) UK DRS shall receive, prepare, and release hemp samples in accordance with the UK DRS SOP# HM-LB-001 (Procedures for Receiving, Preparing and Releasing Hemp Samples).

(3) UK DRS shall measure delta-9-THC content in accordance with the UK DRS SOP# HMP-LB-002 (Procedures for Measuring Delta 9 THC Content in Industrial Hemp by Gas Chromatography with Flame Ionization Detection).

(4) Following the delivery of THC testing results from UK DRS, the department shall undertake post-testing actions in accordance with the Department SOP# KDA-HEMP-20171214-1 (Procedures for Sampling, THC Testing, and Post-Testing Actions), Section IX.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) SOP# KDA-HEMP-20171214-1 (Procedures for Sampling, THC Testing, and Post-Testing Actions), December 14, 2017 edition;

(b) UK DRS SOP# HMP-LB-002 (Procedures for Measuring Delta 9 THC Content in Industrial Hemp by Gas Chromatography with Flame Ionization Detection), April 4, 2018~~[August 1, 2017]~~ edition; and

(c) SOP# HM-LB-001 (Procedures for Receiving, Preparing and Releasing Hemp Samples), April 3, 2018~~[August 1, 2017]~~ edition.

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of Agricultural Marketing, 105 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. These materials may also be obtained at [www.kyagr.com](http://www.kyagr.com).

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: April 12, 2018

FILED WITH LRC: April 12, 2018 at 2 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on May 23rd, 2018, at 2:00 p.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email [clint.quarles@ky.gov](mailto:clint.quarles@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation established the guidelines for participation in the Industrial Hemp Pilot Project administered by the Kentucky Department of Agriculture.

(b) The necessity of this administrative regulation: This regulation is necessary to establish provisions for growing, movement, processing and possession of industrial hemp.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260.850-260.869 requires the Kentucky Department of Agriculture to regulate industrial hemp. This administrative regulation satisfies this mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation codifies the industrial hemp pilot program that has been administered by the KDA since the 2014 growing season.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment updates material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: This amendment updates material incorporated by reference, replacing older versions.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment updates material incorporated by reference, replacing older versions updating statutory testing.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation, replacing older versions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The KDA has 243 grower applications, and 56 processor applications for the 2018 growing season. Additionally, this regulation affects the KDA and the Kentucky State Police, The University of Kentucky Division of Regulatory

Services, and possibly local law enforcement agencies.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The 2018 applicants wishing to grow, process, or handle industrial hemp must comply with the administrative requirements listed in this collection of filings, including a criminal background check and testing of the crop produced.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will add little to no cost to the entities listed for the growing seasons since 2014, other than the fees established and the governmental costs of additional testing and manpower.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be allowed to grow, process, handle and conduct research on industrial hemp.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The administrative regulation itself adds very little cost to the KDA over previous growing seasons. The KDA employs three (3) full time staff, seasonal contractors, and the partial staff time of several employees to administer the pilot program.

(b) On a continuing basis: The KDA anticipates that the growing market demand for the crop may necessitate additional staff and resources in the future.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funds to administer will come from the fees created by this administrative regulation, as well as the KDA general fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation creates new fees. The KDA will evaluate after a period of time to determine if fee amounts will cover expenses of administration of the program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are directly established, but not increased.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 U.S.C. 5940

2. State compliance standards. KRS 260.850-260.869

3. Minimum or uniform standards contained in the federal mandate. 7 U.S.C. 5940 establish requirements for industrial hemp pilot programs. This administrative regulation establishes the requirements for participation in Kentucky.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture for the administration of the pilot program, plus Kentucky State Police, University of Kentucky Division of Regulatory Services, and local law enforcement.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.850-260.869 and 7 U.S.C. 5940.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The KDA cannot estimate the costs of other agencies, but would reasonably guess that marginal costs increases may be anticipated due to program popularity.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The KDA estimates revenue of \$250,000 at this time. Revenue for UK DRS will be approximately 85 dollars per test sample submitted. We estimate no revenue for law enforcement agencies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The KDA cannot estimate this amount as it is based on number of applicants and growing addresses.

(c) How much will it cost to administer this program for the first year? The KDA fully anticipates the revenue generated to cover only a fraction of the costs to administer the program.

(d) How much will it cost to administer this program for subsequent years? The KDA cannot estimate this amount as it is based on number of applicants and growing addresses.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Perhaps \$250,000

Expenditures (+/-): Well in excess of \$250,000

Other Explanation: